

11/30/94C.S

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION V

136080

IN THE MATTER OF:

VENTURE RIM PRODUCTS SITE

Respondent:

AFSC, INC.

Docket No.

V-W- '95-C-273

ADMINISTRATIVE ORDER BY  
CONSENT PURSUANT TO  
Section 106 OF THE  
COMPREHENSIVE  
ENVIRONMENTAL RESPONSE,  
COMPENSATION, AND  
LIABILITY ACT OF 1980,  
as amended, 42 U.S.C.  
§ 9606(a)

**I. JURISDICTION AND GENERAL PROVISIONS**

This Order is entered voluntarily by the United States Environmental Protection Agency ("EPA") and the Respondent. The Order is issued pursuant to the authority vested in the President of the United States by Sections 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606(a), 9607 and 9622. This authority has been delegated to the Administrator of the EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D, and to the Director, Waste Management Division, Region V, by Regional Delegation Nos. 14-14-A, 14-14-C and 14-14-D.

This Order provides for performance of removal actions and reimbursement of response costs incurred by the United States in connection with property located at 1080 Welch Road, in Commerce Township, Oakland County, Michigan (the "Venture Rim Products Site" or the "Site"). This Order requires the Respondent to conduct removal actions described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

A copy of this Order will also be provided to the State of Michigan, which has been notified of the issuance of this order pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

Respondent's participation in this Order shall not constitute an admission of liability or of EPA's findings or determinations contained in this Order except in a proceeding to enforce the terms of this Order. Respondent agrees to comply with and be bound by the terms of this Order. Respondent further agrees that it will not contest the basis or validity of this Order or its terms.

## **II. PARTIES BOUND**

This Order applies to and is binding upon EPA, and upon Respondent and Respondent's receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Order.

Respondent shall ensure that its contractors, subcontractors, and representatives comply with this Order. Respondent shall be responsible for any noncompliance with this Order.

## **III. FINDINGS OF FACT**

Based on available information, including the Administrative Record in this matter, EPA hereby finds that:

1. The Venture Rim Products Site is located at 1080 Welch Road, in Commerce Township, Oakland County, Michigan. It is comprised of a 34,500 square foot masonry structure on a 2.9 acre parcel. It is located 1.4 miles from the northeastern shore of Walled Lake. Land use in the area is mixed industrial, residential and recreational. The nearest homes are 0.25 mile to the southeast and the northwest of the Site. A wetland is located 40 feet to the northeast of the Site. The Site is not surrounded by a fence or any barrier that would prevent trespassers from accessing the Site.

2. The property has been owned by William Stocki, Judith Stocki, and Terryl Collison since October 31, 1983. The property was leased to R.I.M. Products from October 31, 1983, through July 10, 1989. R.I.M. Products manufactured injection-molded plastic bumpers for heavy vehicles. It was also leased to the Larry J. Winget Trust from July 10, 1989, through June 1, 1993. The Larry J. Winget Trust also entered into a six-month sub-lease agreement with Venture Leasing Company on July 10, 1989. Venture Leasing Company entered into a six-month sub-lease agreement with Venture RIM Products, Inc./Venture Industries Technical Development Company on July 10, 1989. The Site has been vacant for several years.

3. On May 27, 1994, arson destroyed the 1,600 square-foot office space and damaged a storage area at the Venture Rim Products building. The Commerce Fire Department under Chief Bolitho responded to the May 27 fire. Representatives of the Michigan Department of Natural Resources (MDNR) visited the Site on the day after the fire had been extinguished. 235 drums were found to be located in an adjacent warehouse. Approximately 20 of the 235 drums may have been exposed to high temperatures caused by the fire. Another 37 drums were found staged in an adjacent room, apparently unaffected by the fire. Large quantities of spilled chemicals covered the floor, and many of the drums had leaked their contents. MDNR officials reported a detectable chemical odor.

4. A subsequent inspection by MDNR on May 31, 1994, revealed that several drums were bulging and had leaked large quantities of chemicals inside the building, potentially affecting the soil and surface water on the building's east side. This MDNR inspection indicated that the following materials were in the drums: poly-ol resins; isocyanate polymer; toluene diisocyanate, and; methyl diisocyanate. MDNR observed labels on the drums stating "Mobay Poly Onyalkylene Polyol" and "Baydur 724". At the conclusion of the inspection, MDNR placed fifteen to twenty cubic yards of granular sorbent to halt migration of the spilled chemicals.

5. On June 2, 1994, MDNR formally requested the assistance of EPA. On June 6, 1994, EPA conducted a Site assessment accompanied by MDNR representatives, the Commerce Township Fire Chief, and Site co-owner William Stocki. According to Mr. Stocki, the drums had been stored over two years on Site pending sale. Mr. Stocki also indicated that the property was a part of a bankruptcy proceeding. Approximately 285 drums were found in a large room, surrounded by large quantities of spilled chemicals and sorbent material. Most drums carried labels stating that the contents were poly (oxyalkylene) polyol combined with diphenylamine or Methylene diphenyl diisocyanate (MDI). The stained soil observed by MDNR at the Site was found to not be from contaminants flowing from inside the building. There was evidence of trespassing inside the building which included vandalism and signs of arson. There was also construction debris, dumped rubbish and home appliances giving the appearance that the Site was being used as a dump.

6. A General Notice of Potential Liability was issued verbally by EPA to the Bankruptcy Estate of William and Judith Stocki c/o Stuart Gold, Bankruptcy Trustee, on June 8, 1994. This General Notice was confirmed in writing on June 13, 1994.

7. Upon obtaining the authority to access the Site, from the bankruptcy trustee, EPA initiated Site-stabilization activities on June 10, 1994. These activities included the marking, logging, and staging of all drums at the Site on a plastic liner in a secured area of the building. All damaged or leaking drums were overpacked. All spilled material was collected and placed into a plastic-lined roll-off box and the floors were swept of residual material. Upon completion of these stabilization activities, the building was boarded closed and locked on June 16, 1994.

8. The property was leased to James D. Howard, nominee at a Michigan Corporation to be formed, on August 11, 1994. EPA was informed on August 19, 1994, of this lease, as well as of Mr. Howard's intention to conduct repair and construction activities at the Site and ultimately use the warehouse located at the Site as a commercial storage facility. EPA was also informed that trespassers continue to access the property on which the Site is located.

9. EPA was informed on August 23, 1994, that the United States Bankruptcy Court for the Eastern District of Michigan-Southern Division had issued an order authorizing the trustee of the Stocki Bankruptcy to abandon the property on which the Site is located.

10. On August 23, 1994, EPA issued General Notice of Potential Liability regarding the Site to William Stocki, Judith Stocki, Terryl Collison, and Grand River Storage c/o James Howard.

11. AFSC, Inc., was formed, with James D. Howard as its nominee, on September 16, 1994. AFSC, Inc., then became the tenant at the Site, according to the terms of the August 11, 1994, lease.

#### **IV. CONCLUSIONS OF LAW AND DETERMINATIONS**

Based on the Findings of Fact set forth above, and the Administrative Record supporting these removal actions, EPA has determined that:

1. The Venture Rim Products Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

2. Methylene diphenyl diisocyanate (MDI) is a "hazardous substance" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

3. The Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

4. Respondent AFSC, Inc., is the present "owner" and "operator" of the Venture Rim Products Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20). The Respondent therefore may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

5. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22).

6. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended ("NCP"), 40 CFR § 300.415(b)(2). These factors include, but are not limited to, the following:

**a. Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants;**

The drums and roll-off box at the Site contain methylene diphenyl diisocyanate (MDI), which is a substance known to be toxic upon inhalation, ingestion and dermal contact. Further, methylene diphenyl diisocyanate (MDI) can decompose into yet another hazardous substance: hydrocyanic acid gas. The Site is located in a mixed industrial, residential and recreational area. Although the drums in the worst condition have been overpacked, neither the drums nor the roll-off box can be allowed to remain in their current location without risking exposure of nearby human populations, animals, or the food chain to hazardous substances, pollutants or contaminants. This is true because the property on which the Site is located continues to be accessed by trespassers. Additionally, the portion of the building in which the drums and roll-off box are located remains fire-damaged and accessible to animals and humans. Finally, if the area where the drums and roll-off box are currently located is used for commercial storage activity, there is a risk that they may be disturbed by this activity, and exposure may result.

**b. Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release;**

The Site is in a mixed-use area. Because there is no fence around the property, and because portions of the building are damaged by fire, the area of the Site where the roll-off box and drums are located remains accessible to animals and humans. The drums contain methylene diphenyl diisocyanate (MDI), a substance known to be toxic upon inhalation, ingestion, and dermal contact. Further, methylene diphenyl diisocyanate (MDI) can decompose into yet another hazardous substance: hydrocyanic acid gas. Human and animal activities in the area of the site where the drums and roll-off box are located may result in disturbance of the drums and roll-off box, and may result in the subsequent release of the hazardous substances contained in the drums and the roll-off box.

**c. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released;**

This factor is present at the Site due to the existence of large holes in the roof and exterior walls of the building. This lack of structural integrity provides exposure to weather elements, including rain, wind, and freeze-thaw cycles. Such conditions invite degradation of the drums, and increase the likelihood for the release of hazardous substances.

**d. threat of fire or explosion;**

This factor is present at the Site due to the history of arson at the Site, and the fact that trespassers continue to access

the Site. Heat damage to the drums by any future fires will exacerbate the probability of a release of hazardous substances, particularly hydrocyanic acid, which results from the decomposition of MDI.

7. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

8. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment, and are not inconsistent with the NCP or CERCLA.

#### V. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, it is hereby ordered and agreed that Respondent shall comply with the following provisions, including but not limited to all documents attached to or incorporated into this Order, and perform the following actions:

1. Designation of Contractor, Project Coordinator, and On-Scene Coordinator

Respondent shall perform the removal actions required by this Order itself or retain a contractor to implement the removal actions. Respondent shall notify EPA of Respondent's qualifications or the name and qualifications of such contractor, whichever is applicable, within 5 business days of the effective date of this Order. Respondent shall also notify EPA of the name and qualifications of any other contractors or subcontractors retained to perform work under this Order at least 5 business days prior to commencement of such work. EPA retains the right to disapprove of the Respondent or any of the contractors and/or subcontractors retained by the Respondent. If EPA disapproves a selected contractor, Respondent shall retain a different contractor within 2 business days following EPA's disapproval and shall notify EPA of that contractor's name and qualifications within 3 business days of EPA's disapproval.

Within 5 business days after the effective date of this Order, the Respondent shall designate a Project Coordinator who shall be responsible for administration of all the Respondent's actions required by the Order. Respondent shall submit the designated coordinator's name, address, telephone number, and qualifications to EPA. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of any Project Coordinator named by the Respondent. If EPA disapproves a selected Project Coordinator, Respondent shall retain a different Project Coordinator within 3 business days following EPA's disapproval and

shall notify EPA of that person's name and qualifications within 4 business days of EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent.

The EPA has designated Partap Lall of the Emergency Response Branch, Region 5, as its On-Scene Coordinator (OSC). Respondent shall direct all submissions required by this Order to the OSC at 9311 Groh Road, Room 216, Grosse Ile, Michigan, 48138-1697, by certified or express mail. Respondent shall also send a copy of all submissions to Catherine Garypie, Assistant Regional Counsel, 77 West Jackson Boulevard, CS-29A, Chicago, Illinois, 60606-3590. All Respondents are encouraged to make their submissions to EPA on recycled paper (which includes significant postconsumer waste paper content where possible) and using two-sided copies.

EPA and Respondent shall have the right, subject to the immediately preceding paragraph, to change their designated OSC or Project Coordinator. EPA shall notify the Respondent, and Respondent shall notify EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. The initial notification may be made orally but it shall be promptly followed by a written notice.

## 2. Work to Be Performed

Respondent shall perform, at a minimum, the following removal actions:

- a. Provide Site security;
- b. Develop and implement a Site health and safety plan;
- c. Sample and analyze the materials in all of the containers at the Site (including the roll-off box);
- d. Develop and implement a sampling plan to address the extent of contamination at the Site; and
- e. Containerize, properly transport and properly dispose of hazardous substances at the Site, as appropriate.

### 2.1 Work Plan and Implementation

Within 10 business days after the effective date of this Order, the Respondent shall submit to EPA for approval a draft Work Plan for performing the removal activities set forth above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Order.

EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If EPA requires revisions, Respondent shall

submit a revised draft Work Plan within 7 business days of receipt of EPA's notification of required revisions. Respondent shall implement the Work Plan as finally approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondent shall notify EPA at least 48 hours prior to performing any on-Site work pursuant to the EPA approved work plan.

Respondent shall not commence or undertake any removal actions at the Site without prior EPA approval.

## 2.2 Health and Safety Plan

Within 10 business days after the effective date of this Order, the Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Order. This plan shall comply with applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 CFR Part 1910. If EPA determines it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA, and implement the plan during the pendency of the removal action.

## 2.3 Quality Assurance and Sampling

All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with EPA guidance.

Upon request by EPA, Respondent shall have such a laboratory analyze samples submitted by EPA for quality assurance monitoring. Respondent shall provide to EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Respondent shall also ensure provision of analytical tracking information consistent with OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites."

Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent or its contractors or agents while performing work under this Order. Respondent shall notify EPA not less than 3 business days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.



## 2.4 Post-Removal Site Control

In accordance with the Work Plan schedule, or as otherwise directed by the OSC, Respondent shall submit a proposal for post-removal Site control, consistent with Section 300.415(k) of the NCP, 40 CFR § 300.415(k), and OSWER Directive 9360.2-02. Upon EPA approval, Respondent shall implement such controls and shall provide EPA with documentation of all post-removal Site control arrangements.

## 2.5 Reporting

Respondent shall submit a monthly written progress report to EPA concerning actions undertaken pursuant to this Order, beginning 30 calendar days after the date of EPA's approval of the Work Plan, until termination of this Order, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

Any Respondent that owns any portion of the Site shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice of this Order to the transferee and written notice of the proposed conveyance to EPA and the State. The notice to EPA and the State shall include the name and address of the transferee. The party conveying such an interest shall require that the transferee will provide access as described in Section V.3 (Access to Property and Information).

## 2.5 Final Report

Within 60 calendar days after completion of all removal actions required under this Order, the Respondent shall submit for EPA review a final report summarizing the actions taken to comply with this Order. The final report shall conform to the requirements set forth in Section 300.165 of the NCP, 40 CFR § 300.165. The final report shall also include a good faith estimate of total costs incurred in complying with the Order, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits).

The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

3. Access to Property and Information

Respondent shall provide or obtain access to the Site and off-Site areas to which access is necessary to implement this Order, and shall provide access to all records and documentation related to the conditions at the Site and the actions conducted pursuant to this Order. Such access shall be provided to EPA employees, contractors, agents, consultants, designees, representatives, and State of Michigan representatives. These individuals shall be permitted to move freely at the Site and appropriate off-Site areas in order to conduct actions which EPA determines to be necessary. Respondent shall submit to EPA, upon request, the results of all sampling or tests and all other data generated by Respondent(s) or its contractor, or on the Respondent's behalf during implementation of this Order.

Where work under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within 14 calendar days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondent shall immediately notify EPA if, after using its best efforts, it is unable to obtain such agreements. Respondent shall describe in writing its efforts to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs and attorneys fees incurred by the United States in obtaining such access.

4. Record Retention, Documentation, Availability of Information

Respondent shall preserve all documents and information relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for six years following completion of the removal actions required by this Order. At the end of this six year period and at least 60 days before any document or information is destroyed, Respondent shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA. In addition, Respondent shall provide documents and information retained under this Section at any time before expiration of the six year period at the written request of EPA.

## 5. Off-Site Shipments

All hazardous substances, pollutants or contaminants removed off-Site pursuant to this Order for treatment, storage or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, with the EPA Revised Off-Site Rule, 40 CFR § 300.440, 58 Federal Register 49215 (Sept. 22, 1993).

## 6. Compliance With Other Laws

Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA Section 121(e), 42 U.S.C. § 9621(e), and 40 CFR § 300.415(i). In accordance with 40 CFR § 300.415(i), all on-Site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements under federal environmental or state environmental or facility siting laws.

## 7. Emergency Response and Notification of Releases

If any incident, or change in Site conditions, during the activities conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondent shall immediately take all appropriate action to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, shall notify the Regional Duty Officer, Emergency Response Branch, Region V at (312) 353-2318, of the incident or Site conditions. If Respondent fails to respond, EPA may respond to the release or endangerment and reserve the right to recover costs associated with that response.

Respondent shall submit a written report to EPA within 7 business days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. Respondent shall also comply with any other notification requirements, including those in CERCLA Section 103, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11004.

## VI. AUTHORITY OF THE EPA ON-SCENE COORDINATOR

The OSC shall be responsible for overseeing the implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other response action

undertaken by EPA or Respondent at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

#### **VII. REIMBURSEMENT OF COSTS**

Respondent shall pay all past response costs and oversight costs of the United States related to the Site that are not inconsistent with the NCP. As soon as practicable after the effective date of this Order, EPA will send Respondent(s) a bill for "past response costs" at the Site. EPA's bill will include an Itemized Cost Summary. "Past response costs" are all costs, including, but not limited to, direct and indirect costs and interest, that the United States, its employees, agents, contractors, consultants, and other authorized representatives incurred and paid with regard to the Site prior to the date through which the Itemized Cost Summary runs.

In addition, EPA will send Respondent a bill for "oversight costs" on an annual basis. "Oversight costs" are all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this AOC. "Oversight costs" shall also include all costs, including direct and indirect costs, paid by the United States in connection with the Site between {either insert the actual date through which the past cost figure above was calculated, or if an Itemized Cost Summary could not be prepared in time to provide a specific figure, insert "the date through which the EPA's Itemized Cost Summary for "past response costs" ran"} and the effective date of this AOC.

Respondent shall, within 30 calendar days of receipt of a bill, remit a cashier's or certified check for the amount of the bill made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency  
Superfund Accounting  
P.O. Box 70753  
Chicago, Illinois 60673

Respondent shall simultaneously transmit a copy of the check to the Director, Waste Management Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590. Payments shall be designated as "Response Costs - Venture Rim Products Site" and shall reference the payor's name and address, the EPA site identification number XA, and the docket number of this Order.

In the event that any payment is not made within the deadlines described above, Respondent shall pay interest on the unpaid balance. Interest is established at the rate specified in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The interest shall begin to

accrue on the date of the Respondent's receipt of the bill (or for past response costs, on the effective date of this Order). Interest shall accrue at the rate specified through the date of the payment. Payments of interest made under this paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section.

Respondent may dispute all or part of a bill for Future Response Costs submitted under this Order, if Respondent alleges that EPA has made an accounting error, or if Respondent alleges that a cost item is inconsistent with the NCP.

If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent shall pay the full amount of the uncontested costs into the Hazardous Substance Fund as specified above on or before the due date. Within the same time period, Respondent shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondent shall simultaneously transmit a copy of both checks to the OSC. Respondent shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within 20 calendar days after the dispute is resolved.

#### **VIII. DISPUTE RESOLUTION**

The parties to this Order shall attempt to resolve, expeditiously and informally, any disagreements concerning this Order.

If the Respondent objects to any EPA action taken pursuant to this Order, including billings for response costs, the Respondent shall notify EPA in writing of its objection within 10 calendar days of such action, unless the objection has been informally resolved. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondent's position, and all supporting documentation on which such party relies. EPA shall submit its Statement of Position, including supporting documentation, no later than 10 calendar days after receipt of the written notice of dispute. In the event that these 10-day time periods for exchange of written documents may cause a delay in the work, they shall be shortened upon, and in accordance with, notice by EPA. The time periods for exchange of written documents relating to disputes over billings for response costs may be extended at the sole discretion of EPA.

An administrative record of any dispute under this Section shall be maintained by EPA. The record shall include the written notification of such dispute, and the Statement of Position served pursuant to the preceding paragraph. Upon review of the

administrative record, the Director of the Waste Management Division, EPA Region 5, shall resolve the dispute consistent with the NCP and the terms of this Order.

Respondent's obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

#### **IX. FORCE MAJEURE**

Respondent agrees to perform all requirements under this Order within the time limits established under this Order, unless the performance is delayed by a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond the control of Respondent or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, that delays or prevents performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work or increased cost of performance.

Respondent shall notify EPA orally within 24 hours after Respondent become aware of any event that Respondent contends constitute a force majeure, and in writing within 7 calendar days after the event. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Respondent shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this Section shall be grounds for EPA to deny Respondent an extension of time for performance. Respondent shall have the burden of demonstrating by a preponderance of the evidence that the event is a force majeure, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay.

If EPA determines a delay in performance of a requirement under this Order is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by EPA. Such an extension shall not alter Respondent's obligation to perform or complete other tasks required by the Order which are not directly affected by the force majeure.

### **X. STIPULATED AND STATUTORY PENALTIES**

For each day, or portion thereof, that Respondent fails to fully perform any requirement of this Order in accordance with the schedule established pursuant to this Order, Respondents shall be liable as follows:

- a. For every calendar day of delay in submitting any documents required by this Consent Order (such as the Work Plan, Work Plan revisions, weekly reports, and the final report) or the name of the Respondent's contractor and Project Coordinator: \$2,000 for days 1 to 15; and \$4,000 for every day thereafter;
- b. For the late submission of the check for oversight costs or the check for past costs: \$1,500 for days 1 to 15; \$3,000 for every day thereafter;
- c. For failure to comply with any other provisions of this Consent Order, including failure to comply with any other deadline contained in this Order or the Workplan, after notice by U.S. EPA of noncompliance: \$4,000 for days 1 to 15; and \$6,000 for every day thereafter.

Upon receipt of written demand by EPA, Respondent shall make payment to EPA within 20 days and interest shall accrue on late payments in accordance with Section VII of this Order (Reimbursement of Costs).

Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Order. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether EPA has notified Respondent of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondent's obligation to complete the performance of the work required under this Order. Stipulated penalties shall accrue, but need not be paid, during any dispute resolution period concerning the particular penalties at issue. If Respondent prevail upon resolution, Respondent shall pay only such penalties as the resolution requires.

Violation of any provision of this Order may subject Respondent to civil penalties of up to twenty-five thousand dollars (\$25,000) per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondent violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial

enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

#### **XI. RESERVATION OF RIGHTS**

Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondent(s) in the future to perform additional activities pursuant to CERCLA or any other applicable law.

#### **XII. OTHER CLAIMS**

By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be a party or be held out as a party to any contract entered into by the Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Order.

Except as expressly provided in Section XIII (Covenant Not To Sue), nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a).

This Order does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). The Respondent waives any claim to payment under Sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, and 9612, against the United States or the Hazardous Substance Superfund arising out of any action performed under this Order.

No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).



### **XIII. COVENANT NOT TO SUE**

Except as otherwise specifically provided in this Order, upon issuance of the EPA notice referred to in Section XVII (Notice of Completion), EPA covenants not to sue Respondent for judicial imposition of damages or civil penalties or to take administrative action against Respondent for any failure to perform removal actions agreed to in this Order except as otherwise reserved herein.

Except as otherwise specifically provided in this Order, in consideration and upon Respondent's payment of the response costs specified in Section VIII of this Order, EPA covenants not to sue or to take administrative action against Respondent(s) under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for recovery of past and future response costs incurred by the United States in connection with this removal action or this Order. This covenant not to sue shall take effect upon the receipt by EPA of the payments required by Section VIII (Reimbursement of Costs).

These covenants not to sue are conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Order. These covenants not to sue extend only to the Respondent and do not extend to any other person.

### **XIV. CONTRIBUTION PROTECTION**

With regard to claims for contribution against Respondent for matters addressed in this Order, the Parties hereto agree that the Respondent is entitled to protection from contribution actions or claims to the extent provided by Section 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4). Nothing in this Order precludes Parties from asserting any claims, causes of action or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery.

### **XV. INDEMNIFICATION**

Respondent agrees to indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action: (A) arising from, or on account of, acts or omissions of Respondent and Respondent's officers, heirs, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, in carrying out actions pursuant to this Order; and (B) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between (any one or more of) Respondent, and any persons for performance of work on or relating to the Site, including claims on account of construction delays. Nothing in this Order, however, requires indemnification by Respondent for any claim or cause of action against the United States based on negligent action taken solely

and directly by EPA (not including oversight or approval of plans or activities of the Respondent).

#### **XVI. MODIFICATIONS**

Modifications to any plan or schedule may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing within 7 business days; however, the effective date of the modification shall be the date of the OSC's oral direction. Any other requirements of this Order may be modified in writing by mutual agreement of the parties.

If Respondent seek permission to deviate from any approved plan or schedule, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis.

No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve Respondent of its obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

#### **XVII. NOTICE OF COMPLETION**

When EPA determines, after EPA's review of the Final Report, that all work has been fully performed in accordance with this Order, except for certain continuing obligations required by this Order (e.g., record retention, payment of costs), EPA will provide notice to the Respondent. If EPA determines that any removal activities have not been completed in accordance with this Order, EPA will notify the Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan if appropriate to correct such deficiencies. The Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure to implement the approved modified Work Plan shall be a violation of this Order.

#### **XVIII. SEVERABILITY**

If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

#### **XIX. EFFECTIVE DATE**

This Order shall be effective upon signature by the Director, Waste Management Division, EPA Region 5.

SIGNATORIES

Each undersigned representative of a signatory to this Administrative Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

Agreed this 17 day of NOVEMBER, 1994.

By

James D. Howard ITS PRESIDENT  
A F S U, Inc. By James D. Howard, President

IT IS SO ORDERED AND AGREED

BY:

William E. Muno  
William E. Muno, Director  
Waste Management Division  
United States  
Environmental Protection Agency  
Region 5

DATE:

11/30/94